O.L.R. Bom. City /45

1945. **File No.**

Legal Department-

A **BRANCH**

Subject:— Opinions under the Bombay City Land Revenue Act, 1876

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C O N T E N T S.

Legal Department File No.O.L.R.C. Bom.City/45.

Sr.No.	N.I. / O.No.	Subject.	Pages.
		Opinions under the Bombay City Land Revenue Act,1876.	
1	5309 18-7-1945.	Sections 30 and 32 — Whether the fine levied under Section 32 for not giving notice of transfer of leasehold rights with the prescribed period was justified.	1-12.

SNT/12.7.

A/1617

THIS INDENTURE made the 22nd day of July 1922 Between the Secretary of State for India in Council hereinafter called the lessor (which expression shall unless the context does not admit be deemed to extend to and include the Secretary of State for India in Council and his successors and assigns) of the one part and Jafferbhai Kanji of B'bay Mahomedan Inhabitant hereinafter called the Lessee (which expression shall unless the Context does not so admit be deemed to extend to and include the said Jafferbhai Kanji ~~of B'bay~~ and his heirs executors administrators and assigns) of the other part WITNESSETH as follows :-

1. In consideration of the rents hereby reserved and of the covenants and agreements on the part of the Lessee hereinafter contained the Lessor doth hereby demise unto the Lessee All that piece or parcel of land or ground (formerly held of Govt. on the tenure known as the sufferance tenure) situate at Chorupdeo Rd. in Kamagaon within the Town and Island and Registration Sub-District of Bombay and particularly delineated in ~~xxxxxx~~ the plan thereof signed by the Collector of B'bay annexed to these presents and thereon surrounded by a red boundary line and admeasuring 1,970 sq. yds or thereabouts of which area the portions coloured red on the said plan and admeasuring in the aggregate 648.5 sq. yds. are at the date of these presents covered by bldgs. erections or structures and the remainder admeasuring 1,321.5 sq.yds. in open and unbuilt upon and which said piece or parcel of ground hereby demised is bounded as follows that is to say on or towards the West by Chorupdeo Rd. aforesaid on or towards the North by a passage leading from Chorupdeo Road ~~Xxxxx~~ to the New Port Trust Rd. on or towards the ~~Xx~~ East by the New Port Trust Rd. and on or towards the South by property belonging to the Trustees of the Port of B'bay and is assessed by the Collector of B'bay under Collector's No.11797 and New Survey Nos. 1/3719 & 11/3720 and C.S. No.729 and is at present in the occupation of the Lessee or his tenants TOGETHER with all rights easements and appurtenances thereto belonging Except and reserving unto the Lessor all mines and

and minerals in and under the said premises or any part thereof

TO HOLD the same unto the Lessee for the term of 99 years commencing from the 1st day of January 1913 Yielding andpaying therefore yearly and every year during the said term on the1st day of January in each year clear of all and any deductions whatsoever unto the Lessor at the Offices of the Collector of Bombay or as shall be required on the part of the Lessor the clear yearly rents following that is to say during the 1st fifteen years of the said term the yearly rent of Rs.85-15-0 in respect of the said land covered by buildings erections or structures at the date of these presents calculated at the rate of one percent on the value of such land at Rs. 4/- per sq.yd. and the yearly rent of Rs.10-9-2 in respect of the remaining land hereby demised and not so covered calculated at the rate of 1/5th of 1% on the value of such land at Rs.4/- per sq.yd. making together an aggregate yearly rent of Rs.96-8-2 (the yearly rents for the 8 years past of the said period accruing on 31st day of December 1920 having been paid previously to the executive of these presents) AND DURING THE NEXT 15 YEARS of the said term commencing on the 1st day of January 1928 the yearly Rs. 51-14-1 in respect of the said land covered by buildings erections or structures at the date of these presents calculated at the rate of 2% on the value of such land at the rate of Rs.4/- per sq.yd. and the yearly rent of Rs.10-9-2 in respect of the remaining land hereby demised and not so covered making together the aggregate yearly rent of Rs.62-7-3 AND DURING THE NEXT 15 YEARS OF the said term commencing on the 1st day of January 1943 the yearly rent of Rs.77-13-1 in respect of the land covered by buildings erections and structures at the date of these presents claculated at the rate of 3% on the value of such land at the rate of Rs. 4/- per sq.yd. and the yearly rent of Rs.10-9-2 in respect of the remaining and hereby demised and not so covered making together the aggregate yearly rent of Rs.88-6-3 AND DURING THE RESIDUE of the said term that is to say for the last 54 years thereof commencing on the 1st day of January 1958 the yearly rent of Rs. 103-12-2 in respect of the land covered by bldgs. erections or structures at the date of these presents calculated at the rate of 4% on the value of such land at the rate of Rs.4/- per sq.yds and the yearly rent of Rs.10-9-2 in

respect

respect of the remaining land hereby demised and not so covered making together the aggregate yearly rent of Rs. 114-5-4 the ent payable in respect of the last year of the said term to be paid in advance on the same date as and along with the rent payable in respect of the penultimate year of the daid term AND ALSO YIELDING in like manner unto the Lessor during the said term such increased yearly rents in respect of such portions of the said land hereby demised as is not covered by buildings erections or structures (hereinafter referred to as vacant land) as may from time to time hereafter become payable under the provisoes hereinafter contained AND ALSO YIELDING AND PAYING in like manner unto the Lessor in the event of and immediately upon the said term being determined by re-entry under the provise hereinafter contained a porportionate part of the said aggregate yearly rent and such increased yearly rent as may have become payable under the provisoes hereinafter contained for the fraction of the current year up to the day of such re-entry.

2. PROVIDED ALWAYS and it is hereby agreed and declared that if and whenever any of the said bldgs . erections or structures for the time being standing upon the said pretion of land part of the said premises as are shown as coloured red on the said plan or any part thereof shall either wholly or partially fall down or be wholly or partially destroyed by fire hurricane earthquake or otherwise the Lessee shall nevertheless continue to pay to the Lessor in respect of the said demised premises during the said term of 99 yrs. the said yearly rent of Rs.114-5-4 (subject to reduction in manner aforesaid during the last 45 years of the said term) but if at any time during the said term the Lessee shall either pull down and wholly remove the bldgs. erections or structures for the time being standing upon any of the said portions of land as are shown as coloured red on the said plan or upon any part thereof respectively and shall remove from the demised premises the whole of the foundations and materials

thereof or if the Lessee shall remove from the demised premises the foundation and materials of any bldgs. erection or structures which shall have either wholly or partially fallen down or been wholly or partially destroyed as aforesaid so that such pretion or portions of the said land or any part thereof shall be converted into vacant land the rent in respect of such portion or portions of the part thereof which may have been converted as aforesaid shall thenceforth be calculated and paid by the Lessee at the said rate of one-fifth of 1% on the value (calculated at the rate of Rs.4/- per sq.yds.) of the portion or portions or the part thereof which shall have been converted as aforesaid so long as no other bldgs. or structures shall be thereafter erected thereon AND the decision in writing of the Collecter of B'bay as to the date when the said portion or portions as aforesaid and as to the area of the pretion or portions or the part the eof which shall from time to time be converted as aforesaid shall be final and abinding upon the Lessee and upon the Lesser.

3. PROVIDED ALWAYS and it is hereby agreed and declared that if at any time after the date of these presents during the said term of - 99 years any bldg., erection or structure of whatever material it may be constructed and which is capable of being used as a habitation for men or animals or made a source of profit shall be erected built or commenced to be erected or built upon that portion of the land hereby demised which is vacant land at the date of these presents addee containing by admeasurement 1321.5 sq.yds. or upon any portion of the land as is shown as coloured red on the said plan which shall have been previously converted into vacant land the lessee shall from the date of the commencement of the erection of any such bldg. erection or structure as aforesaid pay to the lesser an increased yearly rent in respect thereof (equal to 4% upon the value of that portion of the vacant land upon which any such bldg. erection or structure shall be built or erected or commenced to be built or erected (hereinafter referred to as land by additional bldgs.) subject to reduction in manner hereinafter mentioned if the same be erected during the period of

years from the commencement of the said term of 99 years and subject to reduction in the manner provided in the second clause in the event of such land covered by additional bldgs. being again reconverted into vacant land AND such land covered by additional bldgs. shall during the said term be taken for the purpose of this previse to be of the value of Rs.4/- per sq.yd. AND the decision in writing of the Collector of Bombay as to the date of commencement of such increased rent and as to the area of any land covered by additional buildings from time to time during the said term shall be final and binding upon the Lessee and upon the Lessor.

4. PROVIDED ALWAYS and it is hereby agreed and declared that if any such bldg. erection or structure as is referred to in the last proceeding previse shall be erected or built during the first 45 years of the said term of 99 years the increased yearly rent shall during that period be reduced in manner following that is to say:-

(a) If the increased yearly rent shall have become payable at any time during the 1st 15 years of the said term the same shall during that period or the remainder of that period (as the case may be) be reduced to 1/4th of the increased yearly rent and during the next period of 15 years shall be reduced to one half of the increased yearly rent and during the next period of 15 years shall be reduced to 3/4ths of the increased yearly rent.

(b) If the yearly rent shall have become payable at the commencement of the next fifteen years commencing on the 1st day of January 1928 or shall become payable during that period or the remainder of that period (as the case may be) be reduced to one half of the increased yearly rent and during the next period of 15 years shal be reduced to 3/4ths of the increased yearly rent.

(c) If the increased yearly rent shall have become payable at the commencement of the next 15 years commencing on the 1st day of January 1943 or shall become payable during that pried of the said term the same shall during that period or the remainder of

Of the said term. The same shall during that period

of that period (as the case may be) reduced to three-fourths of the increased yearly rent.

5. PROVIDED ALWAYS and it is hereby agreed and declared that if and whenever any bldg erection or structure shall be erected upon any portion of the said vacant land now measuring 1,321.5 sq. yds. or upon any portion of the land as is shown as coloured red on the said plan which shall have been previously convenanted into vacant land as aforesaid so that an increased yearly rent shall have become payable in respect thereof than the said lower yearly rent which would have become payable in respect of that portion of the vacant land shall cease to be payable.

6. PROVIDED ALWAYS and it is hereby further during the said declared that the Lessee shall not at any time during the said term commence the erection of any bldg. erection or structure as is referred to in the 3rd clause hereof upon the said vacant land or upon any portion of the said land coloured red on the said plan which shall have been converted as aforesaid without giving previous written notice to the Collector of Bombay

7. AND the Lessee for himself his heirs executors administrators and assigns doth hereby convenant with the Lessor as follows:-

(a) To pay unto the Lessor the said yearly rents hereby reserved and such increased or other yearly rents as may from time to time become payable under the provisoes hereinbefore contained on the days and in manner hereinbefore appointed for payment thereof clear of all deductions whatsoever.

(b) To pay existing and future taxes rates assessments and outgoings of every description for the time being payable either by landlord tenants or occupier in respect of the said land and premises and anything for the time being thereon or held therewith.

(c) Not to make any excavation upon any portion of the land nor remove any stone sand gravel clay or brick earth therefrom except for the purposes of forming the foundations of buildings or of sinking wells.

(d) Not to make or permit to be made any additions or structural alterations to the bldgs. erections or structures now standing and being upon the demised premises not to

to erect or permit to be erected or constructed on any part of the land hereby demised any other erection or building whatsoever except subject to the following conditions viz:(a) that the plans of every such other erection of bldg. from time to time to be hereafter erected on any part of the said land hereby demised shall previously be submitted by the Lessee for scruting and approval by the Consulting Architect to the Govt. of B'bay or the officer of Govt. for the time being exercising the functions or carrying out the duties of the said Consulting Architect tto the Govt. of B'bay (hereinafter referred to as the Consulting Architent to the Govt.) (b) th t 3 copies of the plans as approved by the Consulting Architect to Govt. shall thereafter be furnished by the Lessee one for the final approval by Govt. of the construction of the proposed erection or bldg. and thereafter to be returned to the Lessee one for record in the office of the Consulting Architect to Government and one for record in the office of the Executive Engr. Presidency District and use during the construction of such erection of bldg.(c) that the actual construction of every such erection or bldg. shall during the progress of the work thereof be supervised by the Ex.Engr., Presy.District or the Officer of Govt. for the time being exercising the functions of carrying out the duties of the Ex.Engr., Presy. Dn. (hereinafter referred to as the Ex.Engr., Presy.) (d) that the said copy of the plan so returned to the Lessee as aforesaid together with a Memorandum signed by the Lessee showing the actual cost of each completed erection or bldg. on the said land hereby demised shall be furnished by the Lessee to the executive Engr., Presy., and (e) that the previously approval of the Consulting Architect to Govt. shall be necessary before any further alterations or additions shall be made by the lessee to any erection or bldg. on the said land hereby demised.

(e) NOT to affix or display or permit to be affixed or displayed on the external walls of any bldgs. or erections built or erected or to be built or erected on the said demised premises any sign-board skysign advertisement or any permanent or temporary attachment whatever of the nature of an advertisement to the exter-

of such buildings or erections unless the consent in writing of the Lessor shall have been previously obtained and unless every such objection or attachment proposed to be affixed or displayed shall have been previously approved in writing by the Lessor or the Consulting Architect.

(f) At the expiration or sooner determination of the said term quietly to deliver up to the Lessor the said land and premises and all erections and buildings then standing or being thereon.

(g) If the lessee shall assign or part with the said premises or any part thereof for the ten residue of the said term the lessee will from time to time within 21 days after every such assignment or assurance shall have been made deliver at the Lessees own expense notice of such assignment or assurance and if require a copy of such assignment or assurance to the Lessor such delivery to be made to the Collector of Bombay or to such officer or person in Bombay on behalf of the Lessor as shall from time to time be required.

8. PROVIDED ALWAYS and it is hereby agreed and declared by and between the said parties to these presents that if the Lessee shall have duly performed and observed the covenants provisoes and conditions on the part of the Lessee hereinbefore contained and shall at the end of the said term hereby granted be desirous of receiving a new lease of the land and premises hereby demised and of such desire shall give notice in writing to the Lessor before the expiration of the term hereby granted the Lessor shall and will at the cost and expense in every respect of the Lessee and upon the Lessee executing a counter-part thereof granted to the Lessee a new lease of the said land and premises for a further term of 99 years and with all the same covenants provisoes and stipulations (including this covenant for renewal) as are in these presents contained or expressed excepting that on such renewal such yearly rent or rents shall be reserved in respect of the whole of the land hereby demised and of the buildings erections and structures thereon whether the same be decreased or increased as the Collr. of B'bay or other person appointed by the Lessor shall determine and intimate inwriting having regard to the situation of the land and the value of the land in the vicinity at the

time

time of such renewal and such determination of the Collr. of B'bay or other person aforesaid shall be final and binding upon the Lessee.

9. PROVIDED ALSO and it is hereby further agreed that if and whenever any part of the yearly rents hereby reserved or of any increased or other yearly rents which shall have became payable under the previsoes hereinbefore contained shal be in arrear for the space of 21 days whether the same shall have legally demanded or not it shall be lawful for the Lesser to enter upon the premises and distrain for the same together with all expenses of such distress PROVIDED ALSO that if the said yearly rents hereby reserved or any increased or other yearly rents hereby reserved or any increased or other yearly rents as aforesaid shall be in arrear for the space of 30 days whether the same shall have been legally demanded or not if and whenever there shall be breach of any of the covenants by the Lessee or of any of the conditions or provisions hereinafter contained the Lesser may re-enter upon any part of the said premises in the name of the whole and thereupon the said term of 99 year and the right to any renewal thereof shall absolutely cease and determine.

10. AND the Lesser doth hereby covenant with the Lessee that the Lessee paying in manner aforesaid the yearly rents hereby reserved and any increased or other yearly rents as may from time to time become payable as aforesaid and performing the covenants hereinbefore on the Lessee's part contained shall and may peaceably enjoy the said demised premises for the said term hereby granted without any interruption or disturbance from or by the Lesser or any person or persons lawfully claiming by from or under the Lesser IN WITNESS HEREOF THE RIGHT HON'BLE the Governor of Bombay in Council hath caused the Collector of Bombay to set his hand and affix his official seal on behalf of the said Secretary of State for Indiam in Council to these presents and the Lessee hath hereunto set his hand and seal the day and year first hereinbefore written.

SIGNED

SIGNED SEALED & DELIVERED by)
Bernard William Kissan, Esq.)
Collector of B'bay in the)
presence of :-)

Signed.

S e a l.

(Sd)

(Sd)

SIGNED SEALED & DELIVERED by)
the abovenamed Jafferbjai Kanji)
in the presence of :-)

(Sd).

(Sd)

(Sd)

SNT/12.7.

Office of the R.L.A.

It appears that by a registered deed dated 22-7-1922 Government leased out a piece of land situate at Ghorupdeo road in Mazgaon in the Town and Island of Bombay to Jafferbhai Kanji for 99 years at a specified rent. By a deed dated 6-6-1944 Jafferbhai Kanji assigned his leasehold rights to one Haji Mahomed Haji Noormahomed Abdul. A clerk of Mr.C.B.Pandya, Soliciter for the assignee gave a notice of transfer under section 30 of the Bombay City Land Revenue Act, 1876. As the said notice was not presented within 20 days a penalty of Rs.50/- was imposed by the Collector under the provisions of section 32, whereupon Mr. Pandya, the Soliciter, pepresented that the said penalty might be waived. On the Collector refusing to waive the penalty, Mr.Pandya by his letter dated 3-4-1945 withdraw the notice of transfer lodged by him under section 30 on the ground that the Lessor and lessee were governed by the provisions of the Transfer of Property Act and not these of the Bombay City Land Revenue Act, 1876. The question for the consideration of the R.L.A. is whether the fine levidd in the present case is legal.

2. Section 30 of the Bombay City Land Revenue Act, 1876 provides that whenever the title to any land, house or other immoveable property, subject to the payment of land revenue to Government, shall be transferred or assigned, the person transferring or assigning the same, and the person to whom the same shall be transferred or assigned, shall respectively cause notice of such transfer or assignment to be given to the Collector; and section 32 prescribes penalty for neglet to give such notice. "Land" includes leasehold rights and the rent payable to Government for such lease is land revenue within the meaning of section 30 (see the definition of "land revenue" in section 3 (2)). Consequently the assignee was bound to give a notice of the assignment of the leasehold rights under section 30 of the Bombay City Land Revenue

Act, 1876 within the prescribed period and the levy of fine under section 32 was therefore justified. The contention that the Transfer of Property Act is applicable in the present case is hardly tenable since that Act is inappliable to Crown grantee of land (see section 2 of the Crown Grants Act, 1895).

Sd/- P.N.MOOS.
17/7/45.

Remembrancer of Legal Affairs.

U.R. to the Collr. of Bombay, No.5309, dated 18th July 1945.

SNT/12.7.